



United States Department of Justice

United States Attorney's Office Central District of California

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October 6, 2017

VIA CM/EFC FILING

Honorable George B. Daniels
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Absolute Activist Value Master Fund Ltd., et al. v. Florian Homm, et al.,
No. 09 Civ. 8862 (GBD)

Dear Judge Daniels:

I write to provide the Court with updated information regarding the criminal prosecution in the Central District of California and to request a continued stay of discovery in this case. I also request the Court's permission for a representative of the government prosecution team to appear telephonically at the October 17, 2017 status hearing if, after reviewing this status report, the Court deems the status hearing necessary.

As we have previously advised, on December 2, 2015, a federal grand jury returned a First Superseding Indictment in United States v. Homm et al., CR 13-183(A)-JAK (the "FSI"). The case was assigned to the Honorable John A. Kronstadt, United States District Court Judge. The FSI added to the original indictment defendants Todd Michael Ficeto, Colin Heatherington, and Craig Heatherington, charging them, variously, with securities fraud, investment advisor fraud, money laundering, and obstruction-related charges. Trial was originally set as against defendant Ficeto for October 25, 2016, was initially continued to March 21, 2017, and was recently (on August 8, 2017) continued again to April 17, 2018. As we have previously explained, the trial has been continued principally due to the volume of discovery; the case results initially from a broker-dealer examination by the Securities & Exchange Commission ("SEC") that became an SEC Enforcement investigation and civil action. Accordingly, the SEC had a substantial database of investigative materials, which are part of the criminal discovery; the parallel criminal investigation encompassed multiple international requests and interviews, and

resulted in voluminous additional discovery. Defendant Ficeto is continuing to review the discovery production, and has indicated to the Court that he may seek foreign depositions. Defendants Colin and Craig Heatherington remain foreign fugitives against whom the United States is seeking extradition.

Due to the pending criminal trial against defendant Ficeto, who also is a party to the civil action before this Court, the government respectfully requests that the Court continue the stay of discovery in this case pending the outcome of the April 17, 2018 criminal trial in the Central District of California. The government submits that a stay of discovery is warranted because discovery in the instant action may: (1) force defendant Ficeto to disclose potential defense theories; (2) require defendant Ficeto to waive his privilege against self-incrimination under the Fifth Amendment to the United States Constitution and to submit to a deposition in order to avoid any adverse inference that may be available to plaintiffs from such invocation; and (3) permit defendant Ficeto discovery in this civil action beyond what is ordinarily available to a defendant under the Federal Rules of Criminal Procedure, which may prejudice the government in the criminal case.

Accordingly, for these reasons, the government respectfully asks this Court to maintain the discovery stay pending the outcome of the September 17, 2017 criminal trial in the Central District of California. The government has inquired of the positions of the parties in this case regarding the stay; the plaintiffs and defendants Homm, Ficeto, and Craig Heatherington report that they do not oppose or object to a continuance of the stay of discovery in this case. (The government has not heard back from defendant Colin Heatherington.)

In the event the hearing remains on calendar, I would also request the Court's permission for a representative of the prosecution team of the United States Attorney's Office, Central District of California, to appear telephonically from Los Angeles at the status hearing, and excuse SAUSA Stanley Okula, counsel of record, from appearing at the hearing. Counsel for defendants Homm and Ficeto advised that they too request permission to appear telephonically in the event the status hearing remains on calendar.

Respectfully,

SANDRA M. BROWN
Acting United States Attorney

/s/ Stephen A. Cazares

STEPHEN A. CAZARES
Assistant United States Attorney

cc: All Counsel
SAUSA Stanley Okula